Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD S. SORANNO,
Petitioner

v.

THE STATE OF CALIFORNIA,
Respondent

ON A PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF
THE STATE OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

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Petitioner in proper person

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1. QUESTIONS PRESENTED

1. Whether the refusal of the California courts to accord full faith and credit to the previous order and contrary findings of a Nevada court pursuant to principles of *res judicata* rendered the application in this case of the California parental rights termination statute, and the presumption of intentional abandonment prescribed therein, codified at California Family Code, Section 7822(a), and (b) repugnant to the federal constitutional and statutory requirements of full faith and credit mandated by Article IV, Section 1 of the Constitution of the United States and the Full Faith and Credit for Child Support Orders Act of 1994, codified at 28 United States Code, Section 1738B; the Supremacy Clause of Article VI (Clause 2) of the Constitution of the United States; and the Due Process Clause of the Fourteenth Amendment?

2. PARTIES TO THE PROCEEDINGS

Petitioner

Richard S. Soranno

Respondent

The State of California
Health and Human Services Bureau

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5. PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES
OF THE SUPREME COURT OF THE UNITED STATES

Richard S. Soranno, Petitioner in proper person, hereby respectfully petitions this Honorable Court to issue a Writ of Certiorari to the Supreme Court of the State of California, to review its judgment in this case.

6. OPINIONS BELOW

The Opinion issued by the Court of Appeal for the State of California, Fourth Appellate District, Division One affirming the Order of the Superior Court of the State of California terminating Petitioner's parental rights with respect to his natural child, was entered on February 9, 2003 and is unpublished. Appendix C. The Order of the Court of Appeal for the State of California, Fourth Appellate District, Division One denying Petitioner's Petition For Rehearing was entered on March 2, 2004 and is unpublished. Appendix D. The Order of the California Supreme Court denying Petitioner's Petition For Review was entered on April 14, 2004 and is also unpublished. Appendix E.

7. BASIS FOR JURISDICTION

This Court has jurisdiction to review the final judgment of the California Supreme Court in this matter by writ of certiorari pursuant to the provisions of 28 United States Code Section 1257(a).

8. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A. UNITED STATES CONSTITUTION

Article IV, Section 1 of the Constitution of the United States provides, in pertinent part, as follows: "Full Faith and Credit shall be given in each State to the ... judicial proceedings of every other State...."

Article VI, Clause 2 of the Constitution of the United States provides, in pertinent part, as follows: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof ... shall be the supreme Law of the Land; and

the Judges in every State shall be bound thereby, and anything in the Constitution or Laws of any State to the contrary notwithstanding."

Section 1 of Amendment XIV to the Constitution of the United States provides, in pertinent part, as follows: "No State shall... deprive any person of... Liberty... without due process of law...."

B. FEDERAL STATUTES

Title 28 United States Code Section 1738B(a) provides, in pertinent part, "The appropriate authorities of each State -- (1) shall enforce according to its terms a child support order made consistently with this section by a court of another State; and (2) shall not seek or make a modification of such an order except in accordance with subsections (e), (f) and (i)." Title 28 United States Code, Section 1738B(b) provides, in pertinent part, as follows: "'child support order' -- means a judgment, decree, or order of a court requiring the payment of child support in periodic payments or in a lump sum..."

Title 28 United States Code, Section 1738B(c) provides, in pertinent part, as follows:

> "A child support order is made consistently with this section if -- (1) a court that makes the order, pursuant to the laws of the State in which the court is located and subsections (e), (f), and (g) --(A) has subject matter jurisdiction to hear the matter and enter such an order; and (B) has personal jurisdiction over the contestants; and (2) reasonable notice and opportunity to be heard is given to the contestants."

Title 28 United States Code, Section 1738B(d) provides as follows:

> "A court of a State that has made a child support order consistently with this section has continuing, exclusive jurisdiction over the order if the State is the child's State

or the residence of any contestant unless the court of another State, acting in accordance with subsection (e), has made a modification of the order."

Title 28 United States Code, Section 1738B(e) provides as follows:

> "Authority to modify orders.-- A court of a State may modify a child support order issued by a court of another State if -- (1) the court has jurisdiction to make such a child support order pursuant to subsection (i); and (2)(A) the court of the other State no longer has continuing, exclusive jurisdiction of the child support order because that State no longer is the child's State or the residence of any individual contestant; or (B) each individual contestant has filed written consent with the State of continuing, exclusive jurisdiction for a court of another State to modify the order and assume continuing, exclusive jurisdiction over the order."

Title 28 United States Code, Section 1738B(g)(2) provides as follows: "In interpreting a child support order, a court shall apply the law of the State of the court that issued the order."

C. CALIFORNIA STATUTES

California Family Code, Section 7822(a) provides as follows:

> "A proceeding under this part may be brought where the child has been left without provision for the child's identification by the child's parent or parents or by others or has been left by both parents or the sole parent in the

care and custody of another for a period of six months or by one parent in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child."

California Family Code, Section 7822(b) provides as follows: "The failure to provide identification, failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents."

D. NEVADA STATUTES

Nevada Revised Statutes, Section 130.204, provides as follows:

"1. A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if: (a) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state; (b) The contesting party challenges the exercise of jurisdiction in the other state in a timely manner; and (c) If relevant, this state is the home state of the child.

2. A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable

pleading is filed in another state if: (a) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state; (b) The contesting party challenges the exercise of jurisdiction in this state in a timely manner; and (c) If relevant, the other state is the home state of the child."

9. STATEMENT OF THE CASE

Petitioner Richard Soranno and Misty Lewis (nee Vise) (hereinafter "Misty") were married in Seattle, Washington in August of 1987. Both parties were *bona fide* residents of Las Vegas, Clark County, Nevada. In approximately March of 1988, Misty became pregnant with the couple's only child, Natalie Marie Soranno, now known as Natalie Lewis (hereinafter "Natalie").

In April of 1988, Misty, maintaining her marital residence in Las Vegas, visited her sister in Coronado, California and thereupon decided to attend school in that state. Meanwhile, Petitioner, who was self-employed, continued to maintain his business in Las Vegas and sought to purchase a local home for his family. While Misty attended school, Petitioner visited her often; and Misty traveled to Nevada on several occasions as well.

In November of 1988, upon his discovery of infidelity on Misty's part, Petitioner brought an action in the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, seeking a decree of divorce. Misty was duly served with the complaint for divorce, to which she filed an answer admitting each and every allegation contained therein.

On December 5, 1988, the couple's daughter, Natalie, was born in Coronado, California, in the presence of the Petitioner.

The Nevada court entered a decree of divorce dissolving the parties' marriage on January 24, 1989; expressly retaining jurisdiction to determine the paternity of the child.

In July of 1989, Petitioner filed an application for an order to show cause in the Superior Court of the State of California in and for the County of San Diego; seeking legal and physical custody of his daughter with an ancillary award of child support *from* Misty; or, in the alternative, visitation. On November 2, 1989, Petitioner was granted joint legal custody with visitation, but Misty was awarded sole physical custody.

No child support order was entered.[1]

On December 30, 1989, Misty married Steven Lewis. She never notified Petitioner of her marriage or consequent change of name. Misty also thereafter informally used the name "Lewis" as Natalie's surname, instead of Natalie's legal surname of "Soranno", without notifying the Petitioner; and ultimately enrolled Natalie in school under the surname "Lewis", absent a decree legally changing Natalie's name.

In February of 1990, Misty moved with Natalie from San Diego, California to Imperial Beach, California, without notifying Petitioner.

On July 9, 1990, the San Diego Superior Court issued an order modifying its previous order of November 2, 1989; granting Misty sole legal and physical custody of Natalie.

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[1] The Full Faith and Credit for Child Support Orders Act, 28 United States Code, Section 1738B(b) defines a "child support order" as a "judgment, decree, or order of a court **requiring the payment of child support** in periodic amounts or in a lump sum." (Emphasis added.) Likewise, California Family Code, Section 4901(u) and Nevada Revised Statutes, Section 130.10187 both define a "child support order" as "a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of the child... **that provides for monetary support**..." (Emphasis added.)

Again, no child support order was entered. Nor has any child support order ever been issued by any court of the State of California. In its order of July 9, 1990, the California court did not reserve jurisdiction as to any matter.

In September of 1990, Misty moved with Natalie to Seattle, Washington, without notifying Petitioner. Indeed, over the next 5 years, Misty moved with Natalie as many times without ever notifying the Petitioner of Natalie's location.

In 1990, with no idea where his daughter was, Petitioner hired a private investigator to locate Natalie. The investigator was unsuccessful.

In 1991, Petitioner opened an interest-bearing account for the benefit of his daughter.

Over the next 10 years, Petitioner employed lawyers in both California and Nevada; hired internet experts to search the "world wide web;" contacted Misty's father and sisters (who refused to cooperate); and hired private investigators in an ongoing, unsuccessful effort to locate his child.

In 2000, Misty petitioned the San Diego Superior Court to issue a decree legally changing Natalie's surname from "Soranno" to "Lewis", without notifying the Petitioner as required by California statute. In a supporting declaration of purported "due diligence", Misty admitted that that she did not want to contact the Petitioner, notify him of the proceedings or otherwise facilitate any contact between he and his daughter. The court allowed her to proceed without notification to the Petitioner, and entered a decree legally changing Natalie's surname.

In February of 2002, a private investigator employed by Petitioner discovered the decree, and thereby located Natalie. Petitioner thereupon began sending letters and money to Natalie in the care of her mother. Misty never notified Natalie of any of the letters or money, and ignored all communication by Petitioner.

In June of 2002, Petitioner succeeded in contacting Natalie by telephone. Immediately thereafter, Misty made an *ex parte* application to the San Diego Superior Court and thereby obtained a restraining order prohibiting Petitioner from contacting or communicating with his child.

Petitioner then brought a petition in the Eighth Judicial District Court of the State of Nevada, seeking, for the first time, to *make* child support payments *to* Misty for the benefit of Natalie. He also petitioned the San Diego Superior Court for a modification of its child custody order of July 9, 1990; again duly notifying Misty.

Misty appeared in Petitioner's Nevada action through local counsel. She challenged the jurisdiction of the Nevada court; and filed a countermotion affirmatively in the alternative, *oppose* Petitioner's request to pay child support. However, she also sought a retroactive order, awarding her over $350,000.00 in child support arrearages. After a hearing on all issues, the Nevada court entered an order finding that it had jurisdiction in the matter; setting prospective child support payments by Petitioner; and denying Misty's countermotion; finding that she had failed to rebut Petitioner's allegations and evidence in response thereto that she had theretofore concealed the child from the Petitioner and was therefore estopped from seeking an award of support arrearages.

Misty was expressly invited to request a subsequent evidentiary hearing on the question of child concealment and thereby seek reconsideration of that finding. She did not do so. Neither did she appeal.

Rather, Misty, through and in the name of the State of California, brought a subsequent, independent action in the San Diego Superior Court to terminate Petitioner's parental rights; and, protesting that Petitioner had neither communicated with nor contributed to the support of Natalie, thereupon alleged that Petitioner had "abandoned" his daughter, pursuant to the

provisions of California Family Code, Section 7822.

California Family Code, Section 7822 provides, in pertinent part, that a proceeding to terminate parental rights may be brought "where the child has been left... by one parent in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent..., with the intent on the part of the parent... to abandon the child." Pursuant to California Family Code, Section 7822(b), failure to provide support or to communicate with the child constitutes presumptive evidence of intent to abandon; the effect of which presumption is to shift the burden to the responding parent of proving that he did *not* intend to abandon the child, in order to overcome the presumption.

However, under California law, (discussed *infra*), the presumption of intent to abandon does *not* attach -- notwithstanding failure of communication or support -- with respect to any period of simultaneous concealment of the child by the parent seeking termination of the other's parental rights.

At trial, the parties agreed that Petitioner had not, in fact, communicated with Natalie between November 6, 1989 and June of 2002. However, Petitioner maintained that, notwithstanding that fact, the above-referenced statutory presumption of intent to abandon did not obtain in this case because, under applicable principles of former adjudication, the previous determination of the Nevada court that Misty had concealed the child from the Petitioner throughout that period of time was entitled to full faith and credit pursuant to Article IV, Section 1 of the United States Constitution and the Full Faith and Credit for Child Support Orders Act of 1994, codified at 28 U.S.C. Section 1738B; and therefore, that to apply the presumption of intent to abandon under such circumstances -- and thereby shift the burden of proof to him -- would be repugnant to the Constitution and laws of the United States.

Nevertheless, the trial court ruled that the California

statutory presumption of intent to abandon provided for by California Family Code, Section 7822(b) would be applied to the period from November 6, 1989 until June 2002; thereby shifting the burden of proof to the Petitioner notwithstanding the previous Nevada court finding that Misty had concealed the child from him throughout that time; and thereafter making an independent finding that she had not done so. Transcript of proceedings on March 13, 2003, pages 37-39. Appendix B.

As later explained by the California Court of Appeal:

> [t]he trial court ruled the Nevada actions were not *res judicata* because (1) the Nevada court made only a preliminary finding on the issue of concealment, allowing Misty to request an evidentiary hearing on the matter, and (2) California was and is the appropriate forum for rulings for Natalie's support." Opinion of California Court of Appeal, Fourth Appellate District, Division One, page 7 (filed February 9, 2004), Appendix C.

At the close of evidence, and following arguments by counsel, the trial court ruled that Petitioner had failed to discharge his burden of overcoming the state statutory presumption of abandonment; and thereupon ordered the termination of Petitioner's parental rights and responsibilities on March 14, 2003.

Petitioner thereafter brought a timely appeal in the California Court of Appeal, Fourth Appellate District, Division One. On February 9, 2004, that court filed its opinion and order; affirming the judgment of the Superior Court. Appendix C. In so doing, the Court of Appeal held that "[t]he trial court correctly found the Nevada court ruling did not affect its ability to rule..."; purportedly deciding that the Nevada court was without jurisdiction to establish a support order in the first instance

because Nevada Revised Statutes, Section 130.204 limits the exercise of jurisdiction by Nevada courts to establish a support order "**after a comparable support order has been filed in another state.**" Opinion page 7. Appendix C.

The court purported to invoke the foregoing Nevada statutory jurisdictional limitation on the basis of the July 9, 1990 order of the California Superior Court "giving Misty sole physical and legal **custody** of Natalie...." Opinion page 7. Appendix C. (Emphasis added.) However, as the Court of Appeal elsewhere expressly acknowledged, although the California court "awarded Misty sole legal and physical **control** of Natalie[,] ***[t]here was no... support order.***" Opinion page 5. Appendix C. (Emphasis added.)

Nevertheless, the Court of Appeal thereupon concluded that:

> "[b]oth Nevada and California law preclude[d] [the Petitioner from]... bringing a motion to set child support in Nevada....[;and therefore, that] [i]n light of these conclusions, we need not decide if the Nevada court issued a ruling on the merits with respect to whether [the Petitioner's] support obligations were impacted by Misty's alleged concealment of Natalie." Opinion pages 7-8. Appendix C.

Petitioner thereafter filed a timely application in the Court of Appeal for rehearing; which was denied without discussion on March 2, 2004. Appendix D.

On March 24, 2004, Petitioner filed a timely application for review in the California Supreme Court, which was summarily denied on April 14, 2004. Appendix E. He now hereby respectfully petitions this Honorable Court for a Writ of Certiorari.

10. REASONS WHY CERTIORARI SHOULD BE GRANTED

I.

The Refusal Of The California Court To Give *Res Judicata* Effect To The Previous Finding Of The Nevada Court That Misty Had Concealed The Petitioner's Daughter Throughout The Relevant Period Of His Purported "Abandonment" Of The Child Rendered The Application In This Case Of California Family Code, Section 7822 To Terminate Petitioner's Parental Rights And Responsibilities Repugnant To The Full Faith And Credit Clause of Article IV, Section 1 Of The Constitution Of The United States; The Supremacy Clause Of Article VI (Clause 2) thereof; The Due Process Clause Of The Fourteenth Amendment thereto; and The Full Faith And Credit Requirements of 28 United States Code Section 1738B.

As this Court made abundantly clear in *Lassiter* v. *Department of Social Services of Durham County,* 452 U.S. 18, 37 (1981), "state intervention to terminate the relationship between [a parent] and child must be accomplished by procedures meeting the requisites of the Due Process Clause." As the Court later pointed out in *Santosky* v. *Kramer*, 455 U.S. 745, 753 (1982), *Lassiter* thereby "reflected this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment." Indeed, as the Court explained in *Santosky*:

> The fundamental liberty interest of natural parents in the care, custody and management of their child does not evaporate simply because they have not been model parents or have lost temporary custody of their children

> to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protection than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures. 455 U.S. at 754.

As this Court further reiterated in *Santosky*, "[t]he minimum requirements [of procedural due process] being a matter of federal law, are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions to adverse official action." *Id.* at 756. Accordingly, in *Santosky*, this Court held that "[b]efore the State may sever completely and irrevocably the rights of parents in their natural child, due process requires that the State support its allegation by at least clear and convincing evidence." *Id.* at 747.

Thus, as the *Santosky* Court explained:

> *Lassiter* declared it 'plain beyond the need for multiple citation' that a natural parent's 'desire for and right to the companionship, care, custody and management of his or her children' is an interest far more precious than any property right. When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. 'If the State prevails, it will have worked a unique kind of deprivation.... A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.' In government-initiated proceedings to determine juvenile delinquency;

> civil commitment; deportation; and denaturalization. This Court has identified losses of individual liberty sufficiently serious to warrant imposition of an elevated **burden of proof**. *Santosky, supra* at 759. (citations omitted.) (Emphasis added.)

Indeed, as the *Santosky* Court pointed out, "**until the State proves parental unfitness**, the child and his parents **share** the vital interest in **preventing erroneous termination of their natural relationship**. Thus, at the factfinding, the interests of the child and his natural parents coincide to favor use of **error-reducing procedures**." *Id.* at 761. (Emphasis added.)

Petitioner respectfully submits that the application in this case of California Family Code Section 7822 and its presumption of intent to abandon by the California Court -- despite the previous determination of a Nevada court of competent jurisdiction that the Petitioner's former wife had contemporaneously concealed his daughter from him throughout the relevant period of purported "abandonment" (a circumstance precluding the invocation of that presumption under California law)-- and the consequent order of the California court shifting the burden to the Petitioner of proving that he had *not* intended to abandon his child during that period of time, was repugnant to the Full Faith and Credit imperatives of both Article IV, Section 1 of the Constitution of the United States and 28 United States Code, Section 1738B; the Supremacy Clause of Article VI (Clause 2) of the United States Constitution; and the Due Process Clause of the Fourteenth Amendment.

Indeed, under California law, even where, as in this case, an undisputed period of 12 months or more has transpired during which a parent has neither communicated with nor provided support for his or her child, a finding that that parent intended to, and therefore did, thereby abandon the child in the custody of the other parent, is precluded by a finding that the custodial parent

had simultaneously concealed the child from the non-communicating parent. *A fortiori,* under such circumstances, an intention on the part of the non-custodial parent to abandon his or her child may not be *presumed*, so as to shift the burden to that parent to prove an *absence* of such intent to abandon on his or her part or suffer the loss of their natural child. *In re Cattalini*, 165 P. 2d 250, 72 Cal. App. 2d 662 (Cal. App. 1946) (where, as in this case, evidence established that father's failure to provide support for minor children who were awarded by divorce decree to care and custody of their mother was attributable in part to indications by the mother that contributions to the support of the children were neither necessary nor welcome, statutory presumption of intentional abandonment arising from failure to support is dispelled). *Contrast*, *In re Adoption of Oukes*, 92 Cal. Rptr. 390, 14 Cal. App. 3d 459 (Cal. App. 1971) (mother's claim that she was prevented from communicating with minor children by emotional and mental strain engendered from marital difficulties did not constitute legal excuse for failure to keep in touch with infants and did not preclude finding of intent to abandon within meaning of statute authorizing actions to terminate parental rights where "**[t]he physical whereabouts of the infants was at no time concealed from her**") (Emphasis added.) *Cf*, *Stanislaus County Department of Child Support Services* v. *Jensen*, 5 Cal. Rptr. 3d 178, 112 Cal. App. 4th 453 (Cal. App. 2003) (mother was estopped from collecting child support arrearages from father for period during which she concealed child); *In re Damico*, 29 Cal. Rptr. 2d 787, 7 Cal. App. 4th 673 (Cal. App. 1994) (accord).

In this case, pursuant to parallel principles of Nevada law, a competent court of that state, had issued an order in December 2002 denying a countermotion filed in that tribunal by Misty requesting payment by Petitioner of back child support; finding on the basis of the uncontroverted evidence that Misty had historically frustrated the possibility of prior pecuniary

provision by Petitioner by theretofore deliberately concealing Natalie from him, and was therefore estopped from seeking such support retroactively.[2]

Accordingly, pursuant to basic principles of *res judicata*, the State of California should not have been permitted to relitigate that issue on Misty's behalf in the subsequent parental rights termination proceedings; the statutory presumption of intent to abandon should not have been applied; and therefore, the burden of *dis*proving his intention to abandon his daughter should never have been shifted to the Petitioner.

As a result, just as in the California case of *In re Allison H.*, 281 Cal. Rptr. 178, 230 Cal. App. 3d 154 (Cal. App. 1991), "[a] gross injustice occurred... on several fronts." In that case, just as in the case at bar, "[y]ears elapsed without communication between father and daughter." An eventual petition to permit the mother's new husband to adopt the child without her father's consent was denied by a judge of the California Superior Court, who issued an order in which he found that the stepfather's hypothesis of child "abandonment" by the father was belied by the mother's interference with the father's ability to maintain a relationship with his child throughout the period during which there had been no communication between the two. As the California Court of Appeal would later point out, "it is important to note at this juncture that this order was not appealed and... [became] final..."

Rather, the stepfather thereafter filed a petition in the same court for the termination of the father's parental rights

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[2] Similarly, after having affirmatively procured restraining orders *enjoining* Petitioner from contacting or communicating with his daughter; and after having affirmatively *opposed* his request to make child support payments to her, Misty brought her petition to terminate Petitioner's parental rights pursuant to a theory of child "abandonment" on his part; complaining that he had neither contacted or communicated with his daughter nor provided her with financial support.

pursuant to the same theory of child abandonment on his part; "and the cause proceeded to a hearing before a different judge." This time, however, the stepfather's argument prevailed; the court finding that the father had abandoned his daughter and thereupon ordering that his parental rights be terminated.

The California Court of Appeal reversed; holding that relitigation of the abandonment issue was precluded by collateral estoppel:

> Of course, [the stepfather] can file a new petition any time he wishes; but that is not the real concern at this point. The pertinent question is whether he is foreclosed from relitigating the same abandonment issue based on conduct predating [the order of the court in the previous matter]. He is.
>
> **We harken to the findings [of the court in the previous matter]. There, the court concluded [that the mother] actively interfered with [the father's ability to maintain a relationship with his daughter]. Put another way, the court declined to find [that the father] was at fault for the lack of communication with his daughter.... [the stepfather and mother] never challenged the[se] findings or the order based upon them. That order is final and should have been accorded collateral estoppel effect in this proceeding. Parties are not entitled to seek out a judge who might be more sympathetic to their position and endlessly relitigate issues on the same set of facts. But relitigate they did. [T]he case was tried by [the stepfather] and the court as if termination of [the father's] parental rights was the goal....**
>
> [In] [t]he judgment, ... the court stated [that].... "...by

clear and convincing evidence, between somewhere in '85 through to '89 there was an abandonment.... [///] [I]t's clear that there has been a year, actually three or four times a year, of no contact with the child with the intent to abandon."

But the court purported to make this ruling just months after another judge concluded, [that].... [the] uncontroverted [evidence by the father]... established that [the mother] and her new husband have held [the child] in another jurisdiction... and have done everything possible to thwart the development of a healthy parent/child relationship between [the father] and his daughter....

Consequently, [the stepfather's] insistence that he should be able to... relitigate [the issue of abandonment during the same period of time].... borders on the frivolous. *Id.* at 181. (Emphasis added.)

Collateral estoppel was no less applicable to the question of contemporaneous concealment by the child's mother in the case at bar. For, as the California courts have duly acknowledged, pursuant to that principle of former adjudication, any issue actually decided in previous litigation by a court of competent jurisdiction is considered conclusively determined as to the parties or their privies in the event that the same issue is joined in a subsequent lawsuit between them on a different cause of action. *Warga* v. *Cooper*, 51 Cal. Rptr. 2d 684, 44 Cal. App. 4th 371 (Cal. App. 1996). See *Salas* v. *Cortez*, 24 Cal. 3d 22 (Cal. 1979).

Indeed, as this Court explained in *Allen* v. *McCurry*, 449 U.S. 90, 94 (1980), "[a] final judgment on the merits of an action

precludes the parties or their privies from relitigating issues that were or could have been raised in that action." And as the court explained in *Montana* v. *United States,* 440 U.S. 147 (1979):

> "[a] fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and *res judicata*, is that a 'right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction ... cannot be disputed in a subsequent suit between the same parties or their privies...'" (quoting *Southern Pacific Railway Company* v. *United States*, 168 U.S. 1, 48-49 (1897))

Thus, as the Supreme Court of California stated in *Bingham* v. *Kearney*, 136 Cal. 175, 177, 68 P. 597 (1902), with direct applicability to the case at bar:

> It is not the policy of the law to allow a new and different suit between the same parties, concerning the same subject matter, that has already been litigated; neither will the law allow the parties to trifle with the courts by piecemeal litigation. When plaintiff was brought into court by the defendant in the former case, she certainly knew her rights.... then and there was the time to present her pleadings and evidence and insist upon all rights to which she was entitled under the law.
>
> **If she could not get the award of the law upon the facts in the lower court, she could have appealed. She did not do so.** She is now met with the presumption that all the facts and matters in controversy were disposed of in the former suit, and the further presumption that the judgment in the former suit is

correct. **If she failed to assert her claim properly, or to present the proper evidence in the first suit, she will not now be permitted in a second to relitigate it.** The principles herein stated are elementary." *Id.* at 177. (Emphasis added.)

Indeed, as that court declared as long ago as *Price* v. *Sixth District Agricultural Association*, 201 Cal. 502 (1927):

> "a judgment operate[s] as *res judicata*, not only in regard to the existence of the plaintiff's cause of action, but as to the nonexistence of the defense which was not pleaded. The reason for this rule lies in the principle that there must be an end to litigation, and, **where a party has an opportunity to present his defense and neglects to do so, the demands of the law require that he should take the consequences.**" *Id.* at 512. (Emphasis added.)

Accordingly, the California courts had the constitutional obligation to give the Nevada order *res judicata* effect, and consequent full faith and credit; foreclosing relitigation in the California termination proceeding of the finding of the Nevada court that Misty had contemporaneously concealed Natalie, thereby precluding her claim of "abandonment" on the part of the Petitioner.

Indeed, as this Court has long since made abundantly clear, "[t]he principles of *res judicata* apply to questions of jurisdiction as well as other issues, as well to jurisdiction of the subject matter as of the parties." *Treinies* v. *Sunshine Mining Company*, 308 U.S. 66, 78 (1939). (Emphasis added.)

Thus, as the California Court of Appeal has acknowledged:

> "[r]equirements of full faith and credit bar a [party] from collaterally attacking a ... decree on jurisdictional grounds in courts of a sister state where [that party] has participated in the ... proceedings, and has been accorded full opportunity to contest jurisdictional issues and where the foreign decree is not susceptible to such collateral attack in the courts of the state which rendered the decree." *In re Marriage of Leff*, 102 Cal. Rptr. 195 (Cal. App. 1972).

In the case at bar, Misty had been given a full and fair opportunity to contest the jurisdiction of the Nevada court, and she actively participated in the Nevada child support proceeding; seeking affirmative relief from that tribunal in the form of retroactive child support; placing the question of her concealment of Petitioner's child directly in issue and necessitating a determination with respect thereto.

Furthermore, the Nevada child support order and finding of child concealment by Misty was also entitled to full faith and credit pursuant to the provisions of the Full Faith and Credit for Child Support Orders Act of 1994, codified at 28 United States Code, Section 1738B; subsection (a)(1) of which requires the states to "enforce according to its terms a child support order made consistently with this section by a court of another State." An order is so made if the issuing court has "personal jurisdiction over the contestants" and "if reasonable notice and opportunity to be heard is given to the contestants." *Id. United States v. Bigford,* 365 F. 3d 859 (10th Cir. 2004).

In the case at bar, the Nevada court determined that it had jurisdiction, after giving Misty -- who appeared through local counsel -- a full and fair opportunity to challenge the same. She did not appeal that determination -- which was not subject to collateral attack pursuant to subsequent litigation in the courts of

another state. Indeed, as this Court explained in *Stoll* v. *Gottlieb*, 305 U.S. 165 (1938):

> We see no reason why a court in the absence of an allegation of fraud in obtaining the judgment, should examine again the question whether the court making the earlier determination in an actual contest over jurisdiction between the parties, did have jurisdiction.... In this case the order upon the petition to vacate the confirmation settled the contest over jurisdiction. Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first.

See *Insurance Corporation of Ireland, Ltd.* v. *Compagnie des Bauxites de Guinee,* 455 U.S. 694, 702, note 9 (1982); *Durfee* v. *Duke*, 375 U.S. 106, 111 (1963). See also *United States* v. *Bigford*, 365 F. 3d 859, 865 (10th Cir. 2004)

> ("Of course, a collateral attack on jurisdictional grounds is precluded in a subsequent proceeding where the jurisdictional issue was fully and fairly litigated and finally decided in the prior proceeding. Indeed, as long as a party had an opportunity to litigate the jurisdictional issue, it is not subject to collateral attack .... Thus, the rule that judgments rendered without

jurisdiction are void and subject to collateral attack is a rule invoked in the context of a collateral challenge to a **default** judgment entered after the defendant has failed to appear") (emphasis added); *United States* v. *Kramer,* 225 F. 3d 847, 857 (7th Cir. 2000) ("a **default** judgment in a civil case is void if there is no personal jurisdiction over the defendant") (emphasis added).

Moreover, and in any event, as the Fifth Circuit Court of Appeals explained in *Fehlhaber v. Fehlhaber,* 681 F. 2d 1015, 1021 (5th Cir. 1982):

> **[T]he *only* concern is whether requirements *of due process* were met. If there was due process the judgment is enforceable *despite a lack of jurisdiction*; if due process was not afforded then the judgment is not enforceable regardless of the existence of jurisdiction.... Therefore, the existence of subject matter jurisdiction is as irrelevant to enforcement as is an error on the merits.** This approach reduces full faith and credit analysis to **only an inquiry into what effect a judgment has in its rendering state**, for a state is not allowed to give effect to a judgment rendered in **violation of due process.** To summarize, in *Underwriters* and previous cases the Supreme Court has stated that "[i]f [the rendering] court did not have jurisdiction over the subject matter or the relevant parties, full faith and credit need not be given,... **[but] principles of *res judicata* apply to questions of jurisdiction as well as to other issues**," limiting the scope of review over jurisdiction. 455 U.S. 691 (1982). (Emphasis added.)

In the case at bar, Misty was afforded both reasonable notice of the proceedings on Petitioner's Nevada support action, and a full and fair opportunity to be heard on all issues before the Nevada court, including that of jurisdiction. She answered, appeared and actively participated in the action by and through Nevada counsel; seeking affirmative relief from that tribunal by countermotion for an order of retroactive child support.

Accordingly, the requirements of due process were therefore fully satisfied, and the Nevada order denying her countermotion for support arrearages and the finding of child concealment on which it was predicated was entitled to full faith and credit in the subsequent California action to terminate the Petitioner's parental rights pursuant to elementary principles of *res judicata*.

Misty neither requested a subsequent evidentiary hearing on the question of concealment of Natalie, "if she felt she was justified **in accordance with Nevada state laws**" as she was invited to do by the Nevada court, which retained jurisdiction for that purpose; nor did she appeal the support order or the denial of her countermotion for support arrearages on either jurisdictional or substantive grounds. See *United States Postal Service* v. *Gregory*, 534 U.S. 1, 16 (2001); *New Haven Inclusion Cases*, 399 U.S. 392, 481 (1970) (party who 'took no appeal' from an adverse order is 'foreclosed by res judicata' from later seeking relief inconsistent therewith); *United States* v. *Kramer*, 225 F. 3d 847 (7th Cir. 2000) "Mr. Kramer should have challenged the state court... judgment through state channels.... His failure to complete that process... does not invalidate the support [order]...." 18 Title Wright, Miller and Cooper, Section 4433 at 305 ("preclusion cannot be defeated by electing to forego an available opportunity to appeal").

Purporting to resolve the instant controversy, the California Court of Appeal held that "[t]he trial court correctly

found the Nevada court ruling did not affect its ability to rule on **matters of Natalie's custody and support**." Opinion page 8, paragraph 2. Appendix C. (Emphasis added).

In so doing, that court avoided entirely the *res judicata* and full faith and credit issues at the heart of Petitioner's appeal; stating that "we need not decide if the Nevada court issued a ruling on the merits with respect to whether [the Petitioner's] support obligations were impacted by Misty's alleged concealment of Natalie." *Id.*

The court, in turn, and despite the foregoing jurisprudence, purported to base that determination on its conclusion that the Nevada court had no subject-matter jurisdiction to issue the ruling in question to begin with; stating that:

> "Nevada Revised Statutes section 130.204 provides a tribunal in Nevada may exercise its jurisdiction to establish a support order... **after *a comparable support order* has been filed in another state**... only where the time has not yet expired in the other state for challenging that other state's jurisdiction and the party seeking the Nevada relief has in fact challenged the other state's jurisdiction..." Opinion page 7, paragraph 3. Appendix C. (Emphasis added.)

In support of that conclusion, the court of appeal purported to rely upon the existence of a previous order of the California Superior Court -- entered prior to the initiation of Petitioner's Nevada action to set child support-- "[u]nder [which]... Misty was granted sole legal and physical **custody** of Natalie." Opinion page 3, paragraph 1. Appendix C. (Emphasis added.)

Thus, the court's opinion (Appendix C) states the following:

> In July 1989 Richard filed an order to show cause in the San Diego County Superior Court in which he sought **custody and visitation**. (Page 2, paragraph 2.) (Emphasis added.)
>
> The order to show cause brought by Richard in 1989 was scheduled for trial on June 15, 1990.... Following the hearing, on July 9, 1990,.... Misty was granted sole legal and physical **custody** of Natalie. (Page 2, paragraph 7-page 3, paragraph 1.) (Emphasis added.)
>
> Here, Richard brought an order to show cause in the San Diego County Superior Court, **seeking to define his rights as to custody and visitation** with Natalie. The matter was heard on July 9, 1990.... At the conclusion of the hearing the court awarded Misty sole legal and physical **control** of Natalie. ***There was no... support order.*** (Page 5, paragraph 1.) (Emphasis added.)

Indeed, had a previous support order already been issued by any court, Misty would have had no reason or basis upon which to seek an order setting retroactive child support by countermotion in response to Petitioner's Nevada action to set child support in the first place.

Finally, the court of appeal purported to rely upon Petitioner's 1989 application to the California Superior Court seeking an *award* of child support, to be paid *to* him *by* Misty, ancillary to an order granting him custody of Natalie, as preclusive of his 2002 petition to the Nevada District Court seeking to set *payment* of child support ***to*** **Misty *by* him**. Opinion pages 7-8, Appendix C.

Petitioner respectfully submits that the above-quoted excerpts from the opinion of the court of appeal demonstrate that

the foregoing findings and conclusions in support of its decision affirming the order of the trial court are clearly erroneous in all respects for the following reasons.

Firstly, it is beyond peradventure that, in this case, the trial court did not merely "rule on matters on Natalie's custody and support" as the court of appeals purports to suggest; but rather, *ordered the irrevocable termination of the Petitioner's parental rights as her natural father*, thereby "not merely... infring[ing]... [a] fundamental liberty interest, but... **end[ing] it**.... [and thereby] work[ing] a unique kind of deprivation." *Santosky* v. *Kramer*, 455 U.S. 745, 759 (1982). (Emphasis added.)

Secondly, whereas Misty was clearly not denied due process by the Nevada court, its determination of its own jurisdiction to adjudicate the Petitioner's action to set child support, having never been appealed by Misty, is itself a matter of *res judicata* which is not susceptible to collateral attack in a court of another state, and which is entitled to full faith and credit therein pursuant to the imperatives of the Constitution and laws of the United States.

Thirdly, there was, in fact, no previous "comparable support order" issued by a court of any other state prior to the initiation of Petitioner's Nevada action to set child support, as the court of appeal expressly concedes.

And finally, Petitioner's 2002 application to the Nevada court was the *first and only petition* for an order setting ***payment by*** *him* of child support for the benefit of his daughter ever filed by him in *any* court; there having been no child support order theretofore issued by a court of *any* state. Accordingly, contrary to the conclusion of the California Court of Appeal, the filing of Petitioner's previous 1989 California petition to *receive* child support did not prevent him from filing a subsequent Nevada petition for an order requiring him to pay child support.

Moreover, under the terms of the Full Faith and Credit for Child Support Orders Act, 28 United States Code, Section 1738B, the California courts ha ' no jurisdiction to modify the Nevada support order, by terminating Petitioner's parental *responsibilities*, in that, at all times relevant hereto Nevada has had continuing, exclusive jurisdiction with respect to the order because Petitioner has continued to reside in that state; Petitioner has not filed written consent with the State of Nevada for a California court to modify the Nevada order and assume continuing, exclusive jurisdiction over the order; and the Nevada court was and is the only court to have issued a support order. 28 United States Code, Section 1738B(d),(e), and (f); *Kilroy* v. *Superior Court,* 63 Cal. Rptr. 2d 390, 54 Cal. App. 4th 793 (Cal. App. 1997).

Accordingly, the trial court was bound by Constitutional and statutory provisions to grant full faith and credit to the prior order of the Eighth Judicial District Court of the State of Nevada denying Misty's countermotion to set retroactive child support; finding that Misty had concealed the Petitioner's daughter from him during the relevant period of his purported "abandonment" of her, as was alleged in the subsequent California action to terminate his parental rights.

The refusal of the California courts to accord full faith and credit to the order and findings of the Nevada court pursuant to applicable principles of *res judicata* rendered the application in this case of the California parental rights termination statute and its presumption of intent to abandon, codified at California Family Code, Section 7822(a) and (b) repugnant to federal constitutional and statutory imperatives of full faith and credit, supremacy and due process of law, and resulted in a grave miscarriage of justice remediable only by this Honorable Court of last resort.

11. CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioner respectfully prays that this Honorable Court will grant his Petition For A Writ Of Certiorari.

Respectfully Submitted,

Richard S. Soranno
2375 E. Tropicana, Ste. 8-269
Las Vegas, Nevada 89119
(702) 655-0742

August 25, 2004

Petitioner in proper person

APPENDIX A

Order and Findings After Hearing
Eighth Judicial District Court of the State of Nevada
County of Clark

Filed December 23, 2002

ORDR
THOMAS STANDISH, ESQ.
ECKER & STANDISH, CHARTERED
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(702) 384-1700
Attorneys for Plaintiff

FILED
Dec 23, 2002
12:19 p.m.
Shirley Parraguirre
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

RICHARD STEVEN SORANNO, Plaintiff,	) CASE NO. D111794
vs.	) DEPT NO. F
MISTY JOY SORANNO, Defendant,	) Date of Hearing: 10/31/02) Time of Hearing: 9:00 a.m.

ORDER

This matter, having come on for hearing on the 31st day of October, 2002, for Plaintiff's Motion to Set Child Support Amount and Defendant's Countermotions, Plaintiff, RICHARD SORANNO (hereinafter "Father"), being present and represented by THOMAS STANDISH, ESQ., of the law firm of ECKER & STANDISH, CHARTERED, and Defendant, MISTY SORANNO, nka MISTY LEWIS (hereinafter "Mother") not being present, and represented by JANALEE MURRAY, ESQ., the Court, having reviewed the pleadings on file, having heard the arguments of counsel, and being fully advised in the premises, and good cause appearing therefor, makes the following findings and orders:

THE COURT HEREBY FINDS that Mother's position is inconsistent in that she has stated that she does not want to received child support from Father, but simultaneously requests that the matter be deferred to California because of the possibility of a greater monthly amount, and further claims arrears in child support.

THE COURT FURTHER FINDS that Mother's allegation regarding the reservation of jurisdiction in the Decree of Divorce raises a valid concern regarding the intent of the parties; however, the Court finds that despite said concerns, this Court has jurisdiction to determine child support pursuant to Chapter 130 of Nevada Revised Statutes, ongoing jurisdiction pursuant to the Decree of Divorce, and personal jurisdiction over Father by virtue of Father's residency within the state.

THE COURT FURTHER FINDS that the nature of Father's business is not relevant to the issue of child support, other than with respect to Father's gross monthly income.

THE COURT FURTHER FINDS that, although Mother has not requested an evidentiary hearing the same has not been held, preliminarily there has been no rebuttal regarding Father's allegations that Mother has hidden the minor child from Father for a period of approximately 12 years, that Mother has surreptitiously changed the minor child's name.

THE COURT FURTHER FINDS that, pursuant to Nevada case law, if a parent hides a child from the other parent, the first parent may be estopped from seeking child support during the period of time the child was hidden, based upon such bad deeds.

THE COURT FURTHER FINDS that, preliminarily, the facts indicate that Mother would be estopped from claiming retroactive child support based upon the unrebutted allegations by Father.

NOW, THEREFORE, based upon the foregoing findings,

IT IS HEREBY ORDERED that Father shall be, and hereby is, required to pay child support in the sum of $600 per month, commencing September, 2002, and continuing until such time as the child (1) becomes emancipated; or (2) attains the age of eighteen (18) years, the age of majority, unless the child is attending secondary education when the child reached eighteen (18) years of age, in which event said child support payments shall continue until the child graduates from high school or attains the age of nineteen (19) years, whichever event first occurs.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the amount of child support payable by Mother herein conforms to the statutory guidelines as set forth in NRS 125B.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Father shall be subject to wage assignment with Father's employer pursuant to NRS 31A.025 to 31A.190, inclusive, should Father become thirty (30) days delinquent in his child support payments.

IT IS FURTHER ORDERED that the amount of child support in this matter may be reviewed every three (3) years pursuant to NRS 125B.145.

IT IS FURTHER ORDERED that if Mother refuses to accept the child support as paid by Father, Father shall open an interest-bearing account and shall deposit said sums into said account each month until such time as Mother is willing the accept the same.

IT IS FURTHER ORDERED that Mother's Countermotion for child support arrears and other requests set forth in her Countermotion shall be, and hereby are, denied.

IT IS FURTHER ORDERED that, if Mother feels justified according to the requirements of Nevada law, Mother may request an evidentiary hearing to refute Father's allegations and establish a basis for constructive arrears.

IT IS FURTHER ORDERED that, if Mother believes Father has misrepresented his income, Mother is entitled to conduct discovery and take depositions in order to more fully ascertain Father's income.

IT IS FURTHER ORDERED that this Court retains jurisdiction to modify Father's child support if his income is determined to differ from that set forth in his Affidavit of Financial Condition on file herein.

Dated this 23rd day of December, 2002.

/s/ ROBERT E. GASTON
DISTRICT JUDGE

Submitted by:

ECKER & STANDISH, CHARTERED

By: /s/ T. Standish
THOMAS STANDISH, ESQ.
Nevada Bar No. 1424
300 S. Fourth St., Suite 901
Las Vegas, Nevada 89101
Attorney for Plaintiff

APPENDIX B

Excerpt of Reporter's Transcript
Proceedings before the Superior Court
of the State of California, County of San Diego
pages 37-39

March 13, 2003

IS ROWINA LEWIS IS MY PARALLEL AND SHE IS NOT RELATED TO THE LEWIS'S.

THE COURT: THANK YOU.

FIRST OF ALL, WE HAD A -- I STARTED TO SAY A BRIEF CHAMBERS. I AM NOT SURE IT WAS THAT BRIEF BUT WE DID HAVE A CHAMBERS DISCUSSION. I ACCEPTED SEVERAL DECLARATIONS INTO EVIDENCE AND I ALSO INFORMED THE ATTORNEYS THAT BASED ON MY REVIEW, MY UNDERSTANDING THERE WAS A STIPULATION THAT THE DEPOSITION OF THE MOTHER, THE DEPOSITION OF THE FATHER, COULD BE LODGED WITH THE COURT IF I WOULD FILTER OUT THE OBJECTIONABLE MATERIAL.

I TOOK JUDICIAL NOTICE OF THE FAMILY LAW FILE AND BASED ON MY REVIEW OF THOSE DOCUMENTS IT APPEARS TO BE THAT IT IS UNCONTROVERTED THAT FROM NOVEMBER 6TH, 1989, UNTIL JUNE 2002, THERE WAS NO CONTACT BETWEEN MR. SORANNO AND NATALIE. I DON'T THINK THAT'S REALLY THE ISSUE IN THIS CASE. AND THAT MR. SORANNO DURING THAT TIME PERIOD MADE NO SUPPORT PAYMENTS TO NATALIE.

SO BASED ON THAT I AM GOING TO FIND THAT AT LEAST THE -- THERE IS A PRESUMPTION THAT MR. SORANNO ABANDONED NATALIE DURING THAT TIME PERIOD AND BASICALLY WHAT THAT DOES IS SHIFTS THE BURDEN NOW TO MR. SORANNO. SO I AM GOING TO MAKE THAT FINDING.

MR. ROBINSON, DID YOU HAVE SOMETHING TO SAY?

MR. ROBINSON: JURISDICTIONALLY THE COURT MAY WANT TO INQUIRE BUT WE ARE

PREPARED TO OFFER A STIPULATION THAT IF MISTY LEWIS WOULD TESTIFY SHE WOULD TESTIFY THAT THE PETITION IS STATISTICALLY CORRECT FOR JURISDICTIONAL PURPOSES.

THE COURT: OKAY. THANK YOU. MY UNDERSTANDING IS THAT, AS I SAY, BASICALLY EVERYONE AGREES THAT'S NOT THE ISSUE IN THIS CASE.

MR. CHUCAS: CORRECT.

THE COURT: SO THE PRESUMPTION NOW SHIFTS.

MR. CHUCAS, DO YOU WANT TO MAKE AN OPENING STATEMENT AT THIS TIME, OR WISH TO WAIVE OPENING STATEMENT? YOU CAN ASSUME I REVIEWED EVERYTHING SO I AM SOMEWHAT FAMILIAR WITH THE ISSUES.

MR. CHUCAS: JUST ONE HOUSEKEEPING MATTER, YOUR HONOR, THAT IS THERE WERE TWO DOMESTIC FILES. THE COURT MADE REFERENCE TO A DOMESTIC FILE. DID THE COURT REVIEW BOTH FILES THAT WERE FILED DOWNTOWN? THOSE CASE NUMBERS ARE D282262. THAT IS THE ONE I BELIEVE WE HAVE.

THE COURT: I HAVE D287116

MR. CHUCAS: DOES THE COURT NOT HAVE THE OTHER ONE, 282262 FILE?

THE COURT: UNLESS IT IS INCORPORATED INTO THIS ONE, NO, I DO NOT.

MR. CHUCAS: COULD THE COURT CHECK?

THE COURT: I HAVE BEEN CHECKING. UNLESS THERE IS SOMETHING YOU HAVE -- HASN'T BEEN GIVEN TO ME, NO, THAT'S ALL I HAVE.

MR. ROBINSON: YOUR HONOR, I BELIEVE IT IS PART OF EXHIBIT -- IT IS EXHIBIT 8 TO THE DEPOSITION OF MR. LEWIS, FEBRUARY 4TH.

THE COURT: I DON'T HAVE MR. LEWIS' DEPOSITION.

MR. ROBINSON: MISTY?

APPENDIX C

Opinion
Court of Appeal of the State of California
Fourth Appellate District, Division One

Filed February 9, 2004

FILED Feb 09, 2004
Stephen M. Kelly, Clerk
Court of Appeal, Fourth District

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Adoption of NATALIE L., a Minor	
MISTY L., Plaintiff and Respondent, v. RICHARD S., Defendant and Appellant.	D042008 (Super. Ct. No. JA49747)

APPEAL from a judgment of the Superior Court of San Diego County, Cynthia Bashant, Judge. Affirmed.

Father Richard S. appeals an order of the San Diego County Superior Court granting mother Misty L.'s petition to declare their minor child Natalie L. free of his custody and control. We affirm.

BACKGROUND

Misty and Richard were married in Seattle, Washington, on August 16, 1987. When they separated on April 1, 1988, Misty was pregnant with Natalie. Natalie was born December 5,

1988. By a judicial decree entered in Clark County District Court, Nevada, on January 24, 1989, Misty and Richard were divorced. The court retained jurisdiction to determine Natalie's paternity.

Misty moved to Coronado, California, where on April 14, 1989, she obtained a domestic violence restraining order against Richard. In July 1989 Richard filed an order to show cause in the San Diego County Superior Court in which he sought custody and visitation. On November 2, 1989, by ex parte order, he was granted joint legal custody with visitation. Misty and Richard were restrained from removing Natalie from San Diego County until November 8, 1992.

On November 12, 1989, Richard violated the restraining order of April 14, 1989. He was arrested, charged and apparently later pleaded guilty to trespass, a violation of Penal Code section 602.

On December 30, 1989, Misty married Steve L.

In addition to the charges stemming from violation of the restraining order, on February 15, 1990, the record reflects Richard was charged with four criminal counts stemming from domestic violence against Misty. These charges were apparently based upon events occurring on April 3, 1989, and November 6, 1989. Three of the counts alleged misdemeanor battery in violation of Penal Code section 242/243, subdivision (a), and one count alleged felony spousal abuse in violation of Penal Code section 273.5.

On February 26, 1990, Richard was to be arraigned on the February 15, 1990, domestic violence charges. He did not appear. A warrant issued for his arrest on April 24, 1990.

The order to show cause brought by Richard in July 1989 was scheduled for trial on June 15, 1990. Richard did not appear. He was, however, represented by counsel. Following the hearing, on July 9, 1990, the court modified its ex parte order of November 8, 1989, which granted Richard joint legal custody.

Under the new order, Misty was granted sole legal and physical custody of Natalie. The order was made without prejudice to Richard recalendaring a hearing.

In 1995 the outstanding criminal charges were purged, Richard never having appeared in the matters.

On September 18, 2002, Richard filed a motion in Clark County District Court in Nevada, requesting that court set child support for Natalie pursuant to Nevada law. Misty responded to the Nevada motion by asking for child support arrearages for a 12-year period. The Nevada court set child support at $600 per month, requiring the sum be paid to Misty. If Misty did not accept the money, Richard was ordered to deposit the sum each month in an interest bearing account. Because Misty did not request an evidentiary hearing on Richard's allegation that she hid Natalie from Richard, the court found she was estopped from obtaining arrearages in child support. It left open the opportunity for her to request such an evidentiary hearing if she wished to refute Richard's allegation she hid Natalie and thereby establish a basis for arrearages.

On October 2, 2002, Richard filed an order to show cause for a modification of custody and visitation in San Diego County Superior Court. Misty filed a petition to declare Natalie free from parental custody and control pursuant to Family Code section 7822. Misty then moved for Natalie's adoption by Steve.

On March 14, 2003, the court declared Natalie free from the custody and control of Richard and ruled his consent would not be necessary for the petition for adoption to go forward.

Richard filed a timely appeal.

DISCUSSION

I

Richard argues there is insufficient evidence he intended

to abandon Natalie. Family Code section 7822, subdivision (a), provides a proceeding to terminate parental rights may be brought "where the child has been left... by one parent in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child." The failure to provide support or to communicate with the child is presumptive evidence of the intent to abandon, and token efforts to communicate or support the child are not sufficient to overcome the presumption of abandonment. (Fam. Code, § 7822, sub. (b).)

At trial, Misty and Richard agreed that Richard had no contact with Natalie between November 6, 1989, and June 2002. At the conclusion of the hearing below, the court found by clear and convincing evidence that for a period of the 12 months following November 1999, Richard intended to abandon Natalie. Richard challenges the sufficiency of this finding. We affirm the court's ruling.

As the parties note, finding under Family Code section 7833 must be supported by clear and convincing evidence. (§ 7821.) Clear and convincing evidence requires a finding of high probability. That is, evidence must be so clear as to leave no substantial doubt and must be sufficiently strong so as to command unhesitating assent of every reasonable mind. (*In re David C.* (1984) 152 Cal.App.3d 1189, 1208.) Questions of intent and abandonment are factual issues governed on appeal by the substantial evidence test. (See *People v. Ryan* (1999(76 Cal.App4th 1304, 1315.) In applying this test, we may not reweigh the evidence or express our independent judgment. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) Rather, the evidence must be viewed on appeal in the light most favorable to the trial court's order and we must draw all reasonable inferences and resolve all conflicts in favor of the prevailing party. (*In re Misako R.* (1991) 2 Cal.App.4th 538, 545.)

Here, Richard brought an order to show cause in the San Diego County Superior Court, seeking to define his rights as to custody and visitation with Natalie. The matter was heard on July 9, 1990. Richard, apparently having left California, did not personally appear but was represented by counsel. There were, at the time criminal charges pending against Richard arising out of then-recent allegations of multiple assaults on Misty, criminal charges for which an arrest warrant was issued and for which he had failed to appear. At the conclusion of the hearing the court awarded Misty sole legal and physical control of Natalie. There was no visitation order or support order. However, the orders were made without prejudice to Richard recalendaring the matter. He did not do so.

In 1995 the criminal charges were expunged, Richard never having answered on them. The first affirmative step taken by Richard to secure his legal rights with respect to Natalie occurred in September 2002 with the filing of a motion in Nevada seeking to set child support. It was followed several weeks later by his filing an order to show cause for modification of custody and visitation in the San Diego County Superior Court. Richard's explanation as to why, for approximately 12 years, he did not seek legal recourse to find Natalie through the court system, child search systems or seek a judicial declaration of his rights and responsibilities was chiefly that he did not think Misty was in California and he thought he needed to find her before the court orders could be changed.

Richard points out that between the end of 1990 and beginning of 2002 his attempts were directed to finding *Misty*. For this he sought help from his brothers and several others outside the legal system. However, such extrajudicial efforts are insufficient. (See *In re Marriage of Comer* (1996(14 Cal4th 504, 530-531; also see *In re Maxwell* (1953) 117 Cal.App.2d 156, 165-166.) Moreover, while the trial court acknowledged he might have made some attempt to contact Misty's relatives, it

concluded these attempts were not directed to finding Natalie, but rather were attempts directed at Misty herself. While Richard stated that between December 1989 and February 1990 he sent gifts to Natalie, Misty testified she did not receive such alleged gifts.

Richard's argument on appeal that he could not have abandoned Natalie because the court proceeding in 1990 removed custody from him is unavailing. The order to show cause proceeding which took that action was one sought by Richard himself. With criminal charges pending against him, he voluntarily chose not appear in court. The order entered by the court expressly invited him to return to court and secure a different ruling. He did not do so. On these facts, Richard's reliance on *In re Cattalini* (1946) 72 Cal.App.2d 662 is misplaced. *Cattalini* holds a custody order favoring one parent does not provide the basis for concluding the other parent has "left" a child. Rather, voluntary action by the parent beyond such an order must be shown. While Richard would seek to carve the facts of this case into those of *Cattalini*, in reality this case differs in important respects. Here, Richard was invited to return to court and change the order made in Misty's favor. It is his disappearance and failure to avail himself of that remedy, i.e., to eliminate the order itself, which forms a substantial basis for the conclusion he did not wish to have a relationship, or communicate, with Natalie.

On this record the court could conclude by clear and convincing evidence that any attempt by Richard to locate, communicate and reestablish custody and visitation with *Natalie* were token efforts. Substantial evidence supports the trial court's order.

II

On February 21, 2003, Richard moved to dismiss Misty's petition to declare Natalie free of his custody and control. He

based his motion on the ground a Nevada court had already set child support and in the process ruled Misty concealed Natalie, thus denying her request for arrearages in child support. The court ruled the Nevada actions were not res judicata because (1) the Nevada court made only a preliminary finding on the issue of concealment, allowing Misty to request an evidentiary hearing on the matter and (2) California was and is the appropriate forum for rulings for Natalie's support.

We begin with the propriety of the Nevada order for Natalie's support.

Nevada Revised Statutes section 130.204 provides a tribunal in Nevada may exercise its jurisdiction to establish a support order even after a comparable support order has been filed in another state. However, it will do so only where the time has not yet expired in the other state for challenging that other state's jurisdiction and the party seeking the Nevada relief has in fact challenged the other state's jurisdiction. Moreover, where relevant, Nevada will not assume jurisdiction where it is not the home state of the child involved. California is guided by the same principles. (Fam. Code, § 4908.)

Based upon these statutes, the Superior Court of San Diego, California, not Nevada, is the appropriate forum for resolving issues of Natalie's custody and support. While Misty and Richard were divorced in Nevada, Natalie was born in San Diego, resided in San Diego most of her life and was a resident of San Diego when all custody and child support orders were entered. Indeed, in 1989 Richard filed an order to show cause petition in the San Diego County Superior Court seeking custody and child support orders for Natalie. The court ruled on this motion, giving Misty sole physical and legal custody of Natalie and setting no child support or visitation. Richard was given the opportunity to return to court and modify these orders, which he did not do. Both Nevada and California law preclude his bringing a motion to set child support in Nevada when the

support issue had been for some time a matter decided by, and was a continuing matter before, the San Diego County Superior Court.

The trial court correctly found the Nevada court ruling did not affect its ability to rule on matters of Natalie's custody and support. In light of these conclusions, we need not decide if the Nevada court issued a ruling on the merits with respect to whether Richard's support obligations were impacted by Misty's alleged concealment of Natalie.

The judgment below declaring Natalie free of Richard's custody and control is affirmed. Costs on appeal are awarded to Misty.

/s/ Benke
BENKE, Acting P.J.

WE CONCUR:

/s/ Huffman
HUFFMAN, J.

/s/ McDonald
McDONALD, J.

APPENDIX D

Order Denying Petition For Rehearing
Court of Appeal of the State of California
Fourth Appellate District, Division One

Filed March 2, 2004

FILED Mar 02, 2004
Stephen M. Kelly, Clerk
Court of Appeal, Fourth District

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

Adoption of NATALIE L., a Minor	
MISTY L., Plaintiff and Respondent, v. RICHARD S., Defendant and Appellant.	D042008 (Super. Ct. No. JA49747)

THE COURT:

The petition for rehearing is denied.

/s/ Benke
BENKE, Acting P.J.

Copies to: All parties

APPENDIX E

Order Denying Petition For Review
California Supreme Court

Filed April 14, 2004

SUPREME COURT
FILED
Apr 14, 2004
Frederick K. Ohlrich, Clerk

Court of Appeal, Fourth Appellate District, Division One
No. D042008
S123334

IN THE SUPREME COURT OF CALIFORNIA

En Banc

Adoption of NATALIE L., a Minor.

MISTY L., Plaintiff and Respondent,

v.

RICHARD S., Defendant and Appellant.

Petition for review Denied.

/s/ George
Chief Justice